

REMARKS

This Response is submitted in reply to the Office Action mailed on March 18, 2009. The Office Action is a restriction requirement. In this regard, restriction is required among four alleged groups of inventions: Group I (Claims 1-14 and 22-25); Group II (Claims 15-17); Group III (Claims 18-19); and Group III (Claims 20-21). Applicants elect, with traverse, Group I (Claims 1-14 and 22-25). Applicants expressly reserve the right to file one or more divisional applications directed to the non-elected claims.

Applicants respectfully traverse the Patent Office's assertion that Groups I-IV are not directed to a single inventive concept. Applicants respectfully submit that a novel aspect of the embodiments of the claimed invention resides in the discovery that there is a synergy between the protein source and the probiotic in the formulas recited in the present claims such that a microflora similar to that found in breast-fed babies can be rapidly established and maintained in infants fed the claimed formula. For example, the specification details various attempts that have been made to improve the protein component in whey-predominant infant formulas and the adverse consequences that resulted. See specification, page 3, line 35 to page 4, line 16. If, however, the amino acid profile of the infant formula can be made closer to that of human milk, the protein content of the formula can be reduced. The improved amino acid profile that results from a reduction in CGMP content and the resulting reduction of the protein content of the formula is an inventive aspect of the present claims. See specification, page 4, lines 18-22.

Applicants have also amended independent Claims 1, 15, 18 and 20 to recite, in part, that the protein content of the formula is no more than 2 g/100 kcal. Thus, the use of a protein content of the formula being no more than 2 g/100 kcal is another general inventive concept that is shared by the pending claims.

In contrast, WO 02/15719 to Fuchs et al. ("Fuchs") as cited in the Office Action fails to disclose or suggest the novel elements of independent Claims 1, 15, 18 and 20. *Fuchs* fails to disclose or suggest a formula having a protein content that is no more than 2 g/100 kcal as required by Claims 1, 15, 18 and 20. In fact, *Fuchs* fails to teach or even recognize the advantages and benefits of an infant formula having a combination of the specified protein content and probiotic with respect to the physiological affect that the formula has on an infant or young child consuming the formula.

For at least the reason discussed above, Applicants respectfully submit that independent Claims 1, 15, 18 and 20, along with the claims that depend from Claims 1, 15, 18 and 20, share at least one inventive concept that distinguishes the claims over the prior art. Accordingly, Applicants respectfully submit that the restriction requirement be withdrawn and that Claims 1-25 be examined together in the currently pending application.

The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please reference Atty. Docket No. 3712036-702.

Respectfully submitted,


K&L GATES LLP


BY

Robert M. Barrett
Reg. No. 30,142
Cust. No. 29157
Phone No. 312-807-4204

Dated: September 28, 2009